

EXHIBIT A-3

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 5:20-cv-03664-LHK-SVK

**[PROPOSED] SPECIAL MASTER
APPOINTMENT ORDER**

PATRICK CALHOUN, ELAINE CRESPO,
HADIYAH JACKSON and CLAUDIA
KINDLER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 5:20-cv-05146-LHK-SVK

[PROPOSED] SPECIAL MASTER APPOINTMENT ORDER

This matter was submitted to the undersigned upon the Court's initiative, as indicated in this Court's previous orders (Dkt. 191-1, 220-1), and the consent of the Parties pursuant to Fed. R. Civ. P. 53(a)(1)(A) for technical matters (Dkt. 196, 223). Accordingly, this Court enters this Order of Appointment.

1. Authority for and Scope of the Appointment

Having given the Parties notice and an opportunity to be heard, the Court now appoints as Special Master [Name]:

The Court makes this appointment pursuant to Fed. R. Civ. P. 53 and the inherent authority of the Court. *See In re Peterson*, 253 U.S. 300, 312–13 (1920). The Special Master is directed to “proceed with all reasonable diligence” to carry out the duties and terms of this appointment as set forth herein. Fed. R. Civ. P. 53(b)(2). The Special Master is appointed to “address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.” Fed. R. Civ. P. 53(a)(1)(C). Consistent with this legal authority and the currently anticipated needs of this Court, the Special Master shall have the authority to perform the following duties:

- a. Address disputes around what information Defendant has regarding Plaintiffs, including without limitation profiles, identifiers, authenticated and unauthenticated data linked to Plaintiffs, their devices, or any other identifiers associated with Plaintiffs and their devices, metadata, and embedded data and derived data;
- b. Address the current disputes around what information Defendant has regarding identification of putative class members, including without limitation profiles, identifiers, identifiers, authenticated and unauthenticated data linked to putative class members, their devices, or any other identifiers associated with putative class members and their devices, metadata, and embedded data and derived data;
- c. Assist the Court in discovery disputes of a technical nature, as the Court deems necessary;

- d. Assist with, or make findings and recommendations with regard to, interpretation of scientific and technical evidence;
- e. Direct, supervise, monitor, and report upon implementation and compliance with the Court's Orders, and make findings and recommendations on remedial action if required;
- f. Provide periodic status reports to the Court;
- g. Make formal and informal recommendations and reports to the Parties, and make recommendations and reports to the Court, regarding any matter pertinent to the above-listed duties; and
- h. Communicate and meet with the Parties and attorneys as needs may arise in order to permit the full and efficient performance of these duties, including but not limited to weekly or bi-weekly check-ins via teleconference or videoconference.

In addition, the Special Master may perform any duties consented to by the Parties pursuant to Fed. R. Civ. P. 53(a)(1)(A). The exact contours of the Special Master's authority and the process by which that authority is exercised may evolve along with the ever-changing nature and scope of the Parties' discovery disputes. Dkt. 196, 223. The Court may amend this Order to add additional duties.

2. Special Master's Duties and Authority

The Special Master shall have the discretion to determine the appropriate procedures for resolution of all assigned matters and shall have the authority to take all appropriate measures to perform the assigned duties. Consistent with the Court's appointment order, the Special Master shall have all of the authority provided to masters set forth in Fed. R. Civ. P. 53(c).

3. Communications with the Parties and the Court

Pursuant to Fed. R. Civ. P. 53(b)(2)(B), the Special Master may confer directly and *ex parte* with the Court, regarding logistics, the nature of his activities, and other appropriate procedural matters, and any other matters as requested by the Court or to which the Parties and their counsel have consented. The Special Master may, if so requested, also assist the Court with

1 legal analysis of the Parties submissions.

2 The Special Master may communicate *ex parte* with any party or his/her/its attorney, as
3 the Special Master deems appropriate, for the purposes of ensuring the efficient administration and
4 management of the Special Master's duties, and for the purpose of mediating or negotiating a
5 resolution of any dispute being addressed by the Special Master. The Special Master may also
6 communicate *ex parte* with any party or his/her/its attorney regarding any matter upon which the
7 Parties or their counsel have consented. The Special Master shall not communicate to the Court
8 any substantive matter the Special Master learned during an *ex parte* communication between the
9 Special Master and any party without express permission from that party. The Court may limit
10 the Special Master's *ex parte* communications if circumstances deem the limitation necessary.

11 *4. Materials to be Preserved and Filed as the Record of the Special Master's Activities*

12 Pursuant to Fed. R. Civ. P. 53(b)(2)(C), the Court orders the following:

13 If the Court asks the Special Master to submit a formal report or recommendation on any
14 matter, the Special Master shall submit such report or recommendation in writing, for filing on the
15 case docket. The Special Master need not preserve for the record any documents created by the
16 Special Master that are docketed in this or any other court, nor any documents received by the
17 Special Master from counsel or Parties in this case. The Parties' submissions to the Special Master
18 shall be sent to the Special Master and not filed on the Court's docket. It shall be the duty of the
19 Parties and counsel, not the Special Master, to provide for any record of proceedings with the
20 Special Master, as approved by the Special Master. The Special Master shall not be responsible
21 for maintaining any records of the Special Master's activities other than billing records. In the
22 event of any hearing where evidence is taken, it shall be the duty of the Parties and counsel to
23 preserve any exhibits tendered or rejected at the hearing.

24 *5. Review of Special Master's Reports, Orders or Recommendations.*

25 Pursuant to Fed. R. Civ. P. 53(b)(2)(D), the Special Master shall reduce any formal order,
26 finding, report, ruling, or recommendation to writing and file it electronically on the case docket
27 via Electronic Case Filing ("ECF"). This Court will follow Fed. R. Civ. P. 53(f) with respect to

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1 action on the Special Master's order, report, or recommendation, except that a Party may file
2 objections to the Special Master's order, report, or recommendation no later than 5 business days
3 after a copy is served, unless the Court sets a different time. Objections shall summarize the legal
4 and factual basis for disagreement with the Special Master's order, report, or recommendation and
5 shall not exceed 3 pages, unless otherwise ordered. The Court will not entertain motions for
6 extension of time to file objections unless good cause is shown. Absent timely objections, the
7 orders, findings, reports, rulings, and recommendations of the Special Master shall be deemed
8 approved, accepted, and ordered by the Court, unless the Court explicitly provides otherwise.

9 If any Party has an objection to an informal ruling or recommendation or order from the
10 Special Master, that Party must request the Special Master formalize the ruling or order by filing
11 it on the docket. Such a request must be made within two calendar days of the informal ruling.
12 Parties are then directed to follow the procedures for objecting to a formal ruling.

13 This Court shall review *de novo* all objections to conclusions of law made or recommended
14 by the Special Master. The Court shall set aside a ruling by the Special Master on a procedural
15 matter only upon a finding of abuse of discretion. The Court reviews findings of fact by the Special
16 Master for clear error. The Court retains the sole authority to issue final rulings on matters formally
17 submitted for adjudication, unless otherwise agreed by the Parties, and subject to waiver of
18 objection to written orders or recommendations.

19 6. Cooperation

20 The Parties and their counsel, including their successors in office, agents, and employees,
21 shall provide full cooperation to the Special Master, and any staff or consultant employed by the
22 Special Master, and shall comply with the requirements of this Court and the rulings of the Special
23 Master. The Parties shall make readily available to the Special Master any and all individuals,
24 information, documents, materials, programs, files, databases, services, facilities, and premises
25 under their control that the Special Master requires to perform his duties.

26 7. Compensation

27 Pursuant to, Fed. R. Civ. P. 53(g), the Special Master shall be compensated at the rate of

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1 \$ per hour, with Defendant bearing 50% of this cost and Plaintiffs bearing 50% of this cost
 2 (25% for the *Calhoun* Plaintiffs and 25% for the *Brown* Plaintiffs). As to any particular portion
 3 of the proceedings necessitated by the conduct of one Party or group of Parties, the Special Master
 4 shall have the authority to assess or reallocate the costs of that portion of the proceedings to the
 5 responsible Party or Parties. The Court reserves jurisdiction to and will determine, at the
 6 conclusion of this litigation, whether the amounts paid to the Master will be borne on the 50/50
 7 basis or will be reallocated. Upon the failure of a Party to timely pay the Special Master's fees,
 8 the Court may enter a judgment in favor of the Special Master and against the non-paying Party.
 9 The Court does not anticipate this appointment extending to a duration that would suggest an
 10 increase to this rate of compensation. However, the Court may revisit this rate of compensation if
 11 there is cause to believe it is no longer reasonable. The Special Master is authorized to employ
 12 staff as may be necessary to assist the Special Master in performing his duties, and shall timely
 13 provide the Court and the Parties with a fee schedule for any such staff he may seek to assist the
 14 Special Master; however, consistent with this appointment Order, the Special Master shall incur
 15 only such fees and expenses as are reasonably necessary to fulfill his duties.

16 The Court has "consider[ed] the fairness of imposing the likely expenses on the parties and
 17 [has taken steps to] protect against unreasonable expense or delay." Fed. R. Civ. P. 53(a)(3).

18 The Special Master shall bill the Parties on a monthly basis for fees and expenses, and the
 19 Special Master shall file an Itemized Statement of fees and expenses (not to include overhead).
 20 The Court must review and approve the reasonableness of the Itemized Statements before
 21 disbursement. Once approved, the Court will sign the corresponding summary statement and
 22 transmit it to the Parties. The Parties shall then remit to the Special Master their proportionate
 23 share of any Court-approved amount, within 30 calendar days of Court approval.

24 *8. Special Master's Affidavit and No Grounds for Disqualification*

25 The Special Master's Affidavit required by Fed. R. Civ. P. 53(b)(3)(A) has been executed
 26 and has been filed.

1 IT IS SO ORDERED.

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3 Dated this ____ day of _____, 2021. Magistrate Judge _____

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